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December 20, 2011

Michelle Marcu
Enforcement Attorney
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

**Re: Freedom of Information Request for Pavillion Field Area
In Fremont County, Wyoming
FOIA Request Number 08-FOI-00076-12**

Dear Ms. Marcu:

This letter is written to follow up on our conversation this afternoon. As an overall matter, Encana sent the FOIA request to Region 8 (including the Region 8 laboratory). Encana expects that Region 8 will provide documents that it has. Encana does not expect Region 8 to gather documents from Region 3, ATSDR, ORD, or other agencies or parts of EPA. If Region 8 presently has records that were obtained by Region 8 from other entities, Encana does expect Region 8 to produce them. Hopefully, this understanding will substantially reduce the time necessary for Region 8 to respond.

Encana does not seek documents concerning its gas processing plant located to the east of the Pavillion Field area. Encana agrees with your suggestion that Encana not seek NEPA documents for other projects (other "federal actions") even if those records reference the Pavillion Field area as part of those NEPA records.

Encana declines the offer to limit its requests to those records that Region 8 determines are not exempt. Encana does agree that it will initially seek only a privilege log of the documents that Region 8 determines are FOIA -exempt, but will not initially seek redacted copies of those documents listed on the privilege log. We discussed returning to the issue of the timing of the privilege log at another time. Please understand that Encana does not agree that its request meets the definition of unusual circumstances or that it will require more than 20 business days. Encana does not intend to take any action presently about your conclusion in that regard, but does need to reserve its rights to challenge that decision later if necessary.

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In addition, for Requests 14-20, upon further reflection and conversation, Encana asks that those requests cover records from January 1, 2005 to present.

For Request 20, Encana does not intend it to cover communications by Region 8 to Region 8. These records are addressed by Request 15. Similarly, communications by Region 8 with Region 3, Kerr, Headquarters, and ATSDR are covered by Requests 16-19. I am concerned in writing this paragraph that your group and I may have thought we understood each other on the scope of Request 20 but did not.

We discussed the narrow scope of a number of the requests. On Request 1, you indicated that Region 8 does not think the record exists. If after obtaining confirmation that Region 8 does not have the requested document, then Region 8 can let Encana know in writing and that will resolve that request. In addition, Requests 5 and 6 are narrow and quite specific. If Region 8 does not have the MSDSs or the product specifications, again it can let Encana know in writing and that will resolve those two requests. Similarly, from our conversation Requests 7 and 8 may cover records that Region 8 simply does not have – the identified SAPs, QMPs and QAPPs and the soil gas sampling records. If ORD did not provide them to Region 8 (and no one else did), then a letter from Region 8 stating that it does not have them will suffice. Similarly, Region 8 indicated that it may not have records responsive to Requests 2, 3, 4, 9, 10, 11, or 12 because they cover matters that ORD did and ORD may not have provided those records to Region 8. Let me know if that is indeed the situation.

With regard to Request 10, EPA has posted on its website the actual methods and so Encana now has them. However, Encana does not have the other documents included within this request.

We also discussed the possibility of Region 8's simply providing the mass spectra records, as described in Request 14. Encana would greatly appreciate Region 8's providing the mass spectra this week or next week if at all possible. Encana hopes that the Region 8 laboratory has it in one location and could provide it relatively easily.

I discussed the urgency in Encana's FOIA request as a result of the 45-day public comment period set by EPA on the draft report about the Pavillion Field area. Encana must have these records in time to analyze them in advance of the January 27, 2011 deadline for comments.

Very truly yours,



Linnea Brown

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